

EXHIBIT B

From: Michael Mitchell

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Subject: RE: In re Pork: MDL DAPs" 2/11 ltr to Court

Date: Monday, February 14, 2022 12:22:40 PM

Attachments: [image001.png](#)

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Jarod,

We do not agree the statement you quote from our letter is misleading. Defendants cannot dispute that they did not provide to DAPs a written proposal regarding any motions to dismiss until just before 5pm CT on February 10—less than 24 hours before Magistrate Judge Bowbeer’s February 11, 12pm CT deadline. There is therefore nothing to correct.

It is also not accurate that on our first call on February 2, you “stated Defendants’ position that DAPs should agree that any order dismissing part of the exemplar complaint should apply to all DAP complaints.” You raised that as a *possibility* Defendants were considering, but you did not state, and I did not understand, that to be the position of all Defendants, let alone a proposal.

Moreover, if Defendants had settled on their proposal as of February 2, there is no reason for Defendants to have waited until February 10 to provide it to DAPs. There was no “agreement” that Defendants would not provide their proposal until after seeing DAPs’ proposal. I shared that DAPs were working on a proposal, and that we would get it to Defendants as soon as we could, which we did. If Defendants had something in hand earlier to advance the discussions, they could have provided it at any time.

As Defendants stated to Chief Judge Tunheim on February 4, there has been little discussion about

potential motions to dismiss. 2/4/22 Hr'g Tr. at 42:15-43:10. DAPs believe any such discussion should not delay entry of the case management order and the filing of Defendants' defenses and affirmative defenses. As the Court suggested, if Defendants wish to raise issues about potential motions to dismiss, that can be addressed at "our next status conference" *Id.* at 43:11-16.

Accordingly, DAPs will not "file a joint correction or clarification with Defendants." If Defendants decide to submit something unilaterally, please be sure to attach this email to your submission.

Best regards,
Mike

Michael S. Mitchell

Partner

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Sent: Saturday, February 12, 2022 12:17 PM

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Subject: In re Pork: MDL DAPs' 2/11 ltr to Court

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Counsel:

We were surprised to see the following statements in MDL DAPs' letter to the Court filed yesterday: "DAPs received Defendants' proposed language in Paragraph 6 for the first time at approximately 6:00 pm Eastern Time on Thursday, February 10, 2022. Thus, DAPs had less than 24 hours to consider, coordinate, and react to Defendants' proposed language before the Court's deadline to file the report on the parties' efforts to meet and confer. See ECF No. 1176." These statements mislead the Court, given the following facts:

- All parties agreed that MDL DAPs would provide a written proposal first, and

Defendants would respond to that proposal. While we did not provide Defendants' written response to MDL DAPs' proposal until 6 pm ET on Thursday, you know that is because we did not receive MDL DAPs' draft until Tuesday afternoon.

- Importantly, that was also not the first time MDL DAPs learned of Defendants' proposal, contrary to your statement to the Court in your letter. When I spoke with Mike Mitchell on Wednesday, February 2, I stated Defendants' position that DAPs should agree that any order dismissing part of the exemplar complaint should apply to all DAP complaints.
- The proposal from MDL DAPs we received the following Tuesday instead proposed that "a motion under Federal Rule of Civil Procedure 12 with respect to any MDL DAP complaint" be filed "on or before the date by which the Defendants' defenses/affirmative defenses are due"—again showing that all parties understood that motions to dismiss were under consideration for this proposal.
- I spoke with Mike Mitchell again that same day about this issue. He confirmed that he had previously raised Defendants' proposal with MDL DAPs, and even explained why MDL DAPs did not agree with Defendants' proposal.

We ask that MDL DAPs file a joint correction or clarification with Defendants on Monday apprising the Court of these facts. If MDL DAPs do not agree to do so, we will file one unilaterally.

I am available only intermittently over the weekend, but will of course make time to discuss.

Best regards,
Jarod

Jarod G. Taylor
Counsel



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